



10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

JUN 11 2003

OFFICE OF PETITIONS

APPLICANT: Durst; Almanza

SERIAL NO: 09/884,656

MARK: ENHANCED BALLISTIC PROTECTION MATERIAL

FILED: June 20, 2001

CLASS: 1772

EXAMINER: Jane Rhee

FILE NO.: 1578

TODAY'S DATE: June 3, 2003

BOX -AF FEE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed: BOX -AF FEE Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Date of Deposit

Mark C. Jacobs, 24043

Date of Signature

Sir:

PETITION TO REVIVE PATENT

Enclosed please find the \$160.00 filing fee for filing a Notice of Appeal in a timely manner. A chronological order of events that lead to the unintentional abandonment - leading to this petition to revive and \$55 filing fee - are as follows (copies enclosed):

On March 25, 2002, a Final Rejection office action was mailed. An informal amendment to the final rejection was faxed to Examiner Rhee on May 31, 2002. Based on that faxed proposal and telephone conversation with Examiner Rhee, submission of the actual response was mailed on June 7, 2002, and counsel was under the belief that the case would now be allowed. In June, July, August, and September we waited for the Allowance.

A telephone call from Examiner Rhee was received on October 23, 2002 stating that she had not received the amendment mailed June 7, 2002. Counsel advised her that he had in fact mailed the amendment and faxed the file copy to the fax number provided by Examiner Rhee. Again, no telephonic communication from the USPTO.

On November 13, 2002 an advisory action was received; responsive to the mailing of the amendment filed on June 7, 2002 and after the same amendment was faxed to Examiner Rhee

06/10/2003 AWDHDAF1 00000030 09884656

02 FC:2452

55.00 OP

1 on October 23, 2002 and 17 weeks after the 6-month statutory deadline to respond to the final
2 rejection mailing date of March 25, 2002. Counsel advised her that he was of the belief that the
3 submission in June would be allowed even after resubmission by fax on October 23, 2002. Due
4 to either a typing error or bad grammar, counsel was unable to comprehend the nature of the
5 advisory and therefore he was unable to respond. A fax to Examiner Rhee request an explanation
6 of the advisory action, and inquired why there had been such an extended delay by the PTO. But
7 no answer was forthcoming. A second request for explanation to the advisory action was faxed
8 to Examiner Rhee on December 12, 2002.

9 A Notice of Abandonment was suddenly received without a cover sheet on January 13,
10 2003. An immediate phone call was placed to Examiner Rhee's supervisor Harold Pyon wherein
11 he requested the fax submitted to Examiner Rhee on November 13th be forwarded to him. The
12 document was faxed to the fax number provided by him. On Thursday, January 30, 2003, a
13 follow up inquiry was carried out. Counsel was advised by Examiner Jane Rhee, *"The case has*
14 *been sent to depository for abandoned applications and there was nothing I could do to try to*
15 *even explain the unintelligible advisory action."* We were stuck. A telecon with SPE Harold Pyon
16 yielded the statement, *"The ultimate responsibility for filing a Notice of Appeal or continuing*
17 *examination lies on you and you should do something before the date of the final rejection. The*
18 *fact that the PTO didn't get your June response to the final rejection to the Examiner until*
19 *October - after actual abandonment, is called 'just one of those things' and we're sorry.*
20 *Technically speaking, the advisory action should not have been issued because of the fact the*
21 *case had already gone abandoned."*

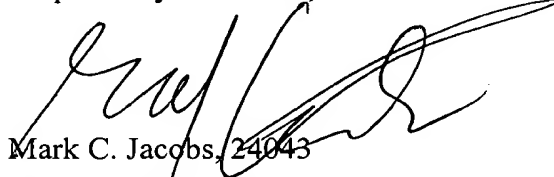
22 The question may be asked why counsel did nothing prior to the 6-month statutory
23 expiration. The answer is that on May 31, 2002, a proposed response was faxed for consideration
24 by the Examiner, Counsel at the time of submission of the actual response on June 7, 2002;
25 which was based upon the faxed proposal and telephone conversation, counsel was under the
26 belief that the case would be allowed.

27 Applicants will suffer irreparable harm if prosecution of this case is not revived. The
28 products covered by these claims are commercial items, and are a source of significant income
29 to applicants' assignee. Counsel is willing to further amend the claim language should such be
30 required, but in order to do so, the cooperation of the USPTO in either clarifying the error laden
31 advisory or the resubmission of a new advisory or a mere telephone conversation of what changes
32 if any are needed to place the case in condition for allowance needs to transpire.

33 The undersigned, being hereby warned that willful false statements and the like so made

1 are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful
2 false statements may jeopardize the validity of the application or any resulting registration,
3 declares that the facts set forth in this application are true; all statements made of his/her own
4 knowledge are true; and all statements made on information and belief are believed to be true.
5

6 Respectfully submitted,

7 
8

9 Mark C. Jacobs, 24043

10 Attorney for Applicant

11 sactopat@aol.com

12 RECEIVED

13 JUN 11 2003

14 OFFICE OF PETITIONS
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35